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SENATE

{ REPORT
104-260

FEDERAL OIL AND GAS ROYALTY SIMPLIFICATION AND FAIRNESS ACT OF 1995

MAY 9, 1996.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1014]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1014) to improve the management of royalties from Federal and Outer Continental Shelf oil and gas leases, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996".

SEC. 2. DEFINITIONS.

Section 3 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended—

(1) by amending paragraph (7) to read as follows:

“(7) ‘lessee’ means any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned;” and

(2) by striking “and” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting a semicolon, and by adding at the end the following:

“(17) ‘adjustment’ means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on an obligation;

“(18) ‘administrative proceeding’ means any Department of the Interior agency process in which a demand, decision or order issued by the Secretary or a delegated State is subject to appeal or has been appealed;

“(19) ‘assessment’ means any fee or charge levied or imposed by the Secretary or a delegated State other than—

“(A) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

“(B) any interest; or

“(C) any civil or criminal penalty;

“(20) ‘commence’ means—

“(A) with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, cross claim, or other pleading seeking affirmative relief or seeking credit or recoupment: *Provided*, That if the Secretary commences a judicial proceeding against a designee, the Secretary shall give notice of that commencement to the lessee who designated the designee, but the Secretary is not required to give notice to other lessees who may be liable pursuant to section 102(a) of this Act, for the obligation that is the subject of the judicial proceeding; or

“(B) with respect to a demand, the receipt by the Secretary or a delegated State or a lessee or its designee (with written notice to the lessee who designated the designee) of the demand;

“(21) ‘credit’ means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

“(22) ‘delegated State’ means a State which, pursuant to an agreement or agreements under section 205 of this Act, performs authorities, duties, responsibilities, or activities of the Secretary;

“(23) ‘demand’ means—

“(A) an order to pay issued by the Secretary or the applicable delegated State to a lessee or its designee (with written notice to the lessee who designated the designee) that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing; or

“(B) a separate written request by a lessee or its designee which asserts an obligation due the lessee or its designee that provides a reasonable basis to conclude that the obligation in the amount of the demand is due and owing, but does not mean any royalty or production report, or any information contained therein, required by the Secretary or a delegated State;

“(24) ‘designee’ means the person designated by a lessee pursuant to section 102(a) of this Act, with such written designation effective on the date such designation is received by the Secretary and remaining in effect until the Secretary receives notice in writing that the designation is modified or terminated;

“(25) ‘obligation’ means—

“(A) any duty of the Secretary or, if applicable, a delegated State—

“(i) to take oil or gas royalty in kind; or

“(ii) to pay, refund, offset, or credit monies including (but not limited to)—

“(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

“(II) any interest; and

“(B) any duty of a lessee or its designee (subject to the provisions of section 102(a) of this Act)—

“(i) to deliver oil or gas royalty in kind; or

“(ii) to pay, offset or credit monies including (but not limited to)—

“(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

“(II) any interest;

“(III) any penalty; or

“(IV) any assessment,

which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;

“(26) ‘order to pay’ means a written order issued by the Secretary or the applicable delegated State to lessee or its designee (with notice to the lessee who designated the designee) which—

“(A) asserts a specific, definite, and quantified obligation claimed to be due, and

“(B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason or reasons such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary or a delegated State;

“(27) ‘overpayment’ means any payment by a lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;

“(28) ‘payment’ means satisfaction, in whole or in part, of an obligation;

“(29) ‘penalty’ means a statutorily authorized civil fine levied or imposed for a violation of this Act, any mineral leasing law, or a term or provisions of a lease administered by the Secretary;

“(30) ‘refund’ means the return of an overpayment;

“(31) ‘State concerned’ means, with respect to a lease, a State which receives a portion of royalties or other payments under the mineral leasing laws from such lease;

“(32) ‘underpayment’ means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation; and

“(33) ‘United States’ means the United States Government and any department, agency, or instrumentality thereof, the several States, the District of Columbia, and the territories of the United States.”.

SEC. 3. DELEGATION OF ROYALTY COLLECTIONS AND RELATED ACTIVITIES.

(a) GENERAL AUTHORITY.—Section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1735) is amended to read as follows:

“SEC. 205. DELEGATION OF ROYALTY COLLECTIONS AND RELATED ACTIVITIES.

“(a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to:

“(1) conduct inspections, audits, and investigations;

“(2) receive and process production and financial reports;

“(3) correct erroneous report data;

“(4) perform automated verification; and

“(5) issue demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes, to any State with respect to all Federal land within the State.

“(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

“(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;

“(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section;

“(3) such delegation will not create an unreasonable burden on any lessee;

“(4) the State agrees to adopt standardized reporting procedures prescribed by the Secretary for royalty and production accounting purposes, unless the State and all affected parties (including the Secretary) otherwise agree;

“(5) the State agrees to follow and adhere to regulations and guidelines issued by the Secretary pursuant to the mineral leasing laws regarding valuation of production; and

“(6) where necessary for a State to have authority to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations with respect to the Federal lands within the State.

“(c) After notice and opportunity for hearing, the Secretary shall issue a ruling as to the consistency of a State’s proposal with the provisions of this section and regulations under subsection (d) within 90 days after submission of such proposal. In any unfavorable ruling, the Secretary shall set forth the reasons therefor and state whether the Secretary will agree to delegate to the State if the State meets the conditions set forth in such ruling.

“(d) After consultation with State authorities, the Secretary shall by rule promulgate, within 12 months after the date of enactment of this section, standards and

regulations pertaining to the authorities and responsibilities to be delegated under subsection (a), including standards and regulations pertaining to:

- “(1) audits to be performed;
- “(2) records and accounts to be maintained;
- “(3) reporting procedures to be required by States under this section;
- “(4) receipt and processing of production and financial reports;
- “(5) correction of erroneous report data;
- “(6) performance of automated verification;
- “(7) issuance of standards and guidelines in order to avoid duplication of effort;
- “(8) transmission of report data to the Secretary; and
- “(9) issuance of demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

“(e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation. If, after providing written notice to a delegated State and a reasonable opportunity to take corrective action requested by the Secretary, the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure may result in an underpayment of an obligation due to the United States by such lessee, and that such underpayment may be uncollected without Secretarial intervention, the Secretary may issue such demand or order in accordance with the provisions of this Act prior to or absent the withdrawal of delegated authority.

“(f) Subject to appropriations, the Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year. Compensation to a State may not exceed the Secretary’s reasonably anticipated expenditure for performance of such delegated activities by the Secretary. Such costs shall be allocable for the purposes of section 35(b) of the Act entitled ‘An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain’, approved February 25, 1920 (commonly known as the Mineral Leasing Act) (30 U.S.C. 191 (b)) to the administration and enforcement of laws providing for the leasing of any onshore lands or interest in land owned by the United States. Any further allocation of costs under section 35(b) made by the Secretary for oil and gas activities, other than those costs to compensate States for delegated activities under this Act, shall be only those costs associated with onshore oil and gas activities and may not include any duplication of costs allocated pursuant to the previous sentence. Nothing in this section affects the Secretary’s authority to make allocations under section 35(b) for non-oil and gas mineral activities. All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.

“(g) Any action of the Secretary to approve or disapprove a proposal submitted by a State under this section shall be subject to judicial review in the United States district court which includes the capitol of the State submitting the proposal.

“(h) Any State operating pursuant to a delegation existing on the date of enactment of this Act may continue to operate under the terms and conditions of the delegation, except to the extent that a revision of the existing agreement is adopted pursuant to this section.”.

(b) CLERICAL AMENDMENT.—The item relating to section 205 in the table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended to read as follows:

“Sec. 205. Delegation of royalty collections and related activities.”.

SEC. 4. SECRETARIAL AND DELEGATED STATES’ ACTIONS AND LIMITATION PERIODS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by adding after section 114 the following new section:

SEC. 115. SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS.

“(a) **IN GENERAL.**—The respective duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated States, and lessees or their designees in a timely manner.

“(b) **LIMITATION PERIOD.**—

“(1) **IN GENERAL.**—A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

“(2) **RULE OF CONSTRUCTION.**—A judicial proceeding or demand that is timely commenced under paragraph (1) against a designee shall be considered timely commenced as to any lessee who is liable pursuant to section 102(a) of this Act for the obligation that is the subject of the judicial proceeding or demand.

“(3) **APPLICATION OF CERTAIN LIMITATIONS.**—The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, and section 42 of the Mineral Leasing Act (30 U.S.C. 226–2) shall not apply to any obligation to which this Act applies. Section 3716 of title 31, United States Code, may be applied to an obligation the enforcement of which is not barred by this Act, but may not be applied to any obligation the enforcement of which is barred by this Act.

“(c) **OBLIGATION BECOMES DUE.**—

“(1) **IN GENERAL.**—For purposes of this Act, an obligation becomes due when the right to enforce the obligation is fixed.

“(2) **ROYALTY OBLIGATIONS.**—The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced.

“(d) **TOLLING OF LIMITATION PERIOD.**—The running of the limitation period under subsection (b) shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, including an action by the Secretary or a delegated State, other than the following:

“(1) **TOLLING AGREEMENT.**—A written agreement executed during the limitation period between the Secretary or a delegated State and a lessee or its designee (with notice to the lessee who designated the designee) shall toll the limitation period for the amount of time during which the agreement is in effect.

“(2) **SUBPOENA.**—

“(A) The issuance of a subpoena to a lessee or its designee (with notice to the lessee who designated the designee, which notice shall not constitute a subpoena to the lessee) in accordance with the provisions of subparagraph (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee or its designee receives the subpoena and ending on the date on which (i) the lessee or its designee has produced such subpoenaed records for the subject obligation, (ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject of obligation are not in existence or are not in the lessee's or its designee's possession or control, or (iii) a court has determined in a final decision that such records are not required to be produced, whichever occurs first.

“(B)(i) A subpoena for the purposes of this section which requires a lessee or its designee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued only by an Assistant Secretary of the Interior or an Acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations), or the Director or Acting Director of the respective bureau or agency, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such subpoena, but may not delegate such authority to any other person.

“(ii) A subpoena described in clause (i) may only be issued against a lessee or its designee during the limitation period provided in this section and only after the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that—

“(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary’s or the applicable delegated State’s written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary’s or such delegated State’s responsibilities under this Act; or

“(II) the lessee or its designee has in writing denied the Secretary’s or the applicable delegated State’s written request to produce such records in the lessee’s or its designee’s possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary’s or such delegated State’s responsibilities under this Act; or

“(III) the lessee or its designee has unreasonably delayed in producing records necessary for an audit, investigation or other inquiry made in accordance with the Secretary’s or the applicable delegated State’s responsibilities under this Act after the Secretary’s or delegated State’s written request.

“(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee or its designee a reasonable period of time after a written request by the Secretary or such delegated State in which to provide such records prior to the issuance of any subpoena.

“(3) MISREPRESENTATION OR CONCEALMENT.—The intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

“(4) ORDER OF PERFORM RESTRUCTURED ACCOUNTING.—(A)(i) The issuance of a notice under subparagraph (D) that the lessee or its designee has not substantially complied with the requirement to perform a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee or its designee receives the notice and ending 120 days after the date on which (I) the Secretary or the applicable delegated State receives written notice that the accounting or other requirement has been performed, or (II) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

“(ii) If the lessee or its designee initiates an administrative appeal or judicial proceeding to contest an order to perform a restructured accounting issued under subparagraph (B)(i), the limitation period in subsection (b) shall be tolled from the date the lessee or its designee received the order until a final, nonappealable decision is issued in any such proceeding.

“(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee or its designee when the Secretary or such delegated State determines during an audit of a lessee or its designee that the lessee or its designee should recalculate royalty due on an obligation based upon the Secretary’s or the delegated State’s finding that the lessee or its designee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

“(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most senior career professional position having responsibility for the royalty management program, which position is currently designated as the ‘Associate Director for Royalty Management’, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205 of this Act, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall—

“(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

“(II) specify the reasons and factual bases for such order;

“(III) be specifically identified as an ‘order to perform a restructured accounting’;

“(IV) provide the lessee or its designee a reasonable period of time (but not less than 60 days) within which to perform the restructured accounting; and

“(V) provide the lessee or its designee 60 days within which to file an administrative appeal of the order to perform a restructured accounting.

“(C) An order to perform a restructured accounting shall not mean or be construed to include any other action by or on behalf of the Secretary or a delegated State.

“(D) If a lessee or its designee fails to substantially comply with the requirement to perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee or its designee that the lessee or its designee has not substantially complied with the requirements to perform a restructured accounting. A lessee or its designee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such notice, which may not be delegated to any other person.

“(e) TERMINATION OF LIMITATIONS PERIOD.—An action or an enforcement of an obligation by the Secretary or delegated State or a lessee or its designee shall be barred under this section prior to the running of the seven-year period provided in subsection (b) in the event—

“(1) the Secretary or a delegated State has notified the lessee or its designee in writing that a time period is closed to further audit; or

“(2) the Secretary or a delegated State and a lessee or its designee have so agreed in writing.

For purposes of this subsection, notice to, or an agreement by, the designee shall be binding on any lessee who is liable pursuant to section 102(a) for obligations that are the subject of the notice or agreement.

“(f) RECORDS REQUIRED FOR DETERMINING COLLECTIONS.—Records required pursuant to section 103 of this Act by the Secretary or any delegated State for the purpose of determining obligations due and compliance with any applicable mineral leasing law, lease provision, regulation or order with respect to oil and gas leases from Federal lands or the Outer Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b). If a judicial proceeding or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceeding is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstances shall a record holder be required to maintain or produce any record relating to an obligation for any time period which is barred by the applicable limitation in this section. In connection with any hearing, administrative proceeding, inquiry, investigation, or audit by the Secretary or a delegated State under this Act, the Secretary or the delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.

“(g) TIMELY COLLECTIONS.—In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obligations to the Treasury within the seven-year period of limitations, and consequently to maximize the State share of such receipts, the Secretary should not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determine that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based on the most current 12 months of activity. This subsection shall not provide a defense to a demand or an order to perform a restructured accounting. To the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to obligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.

“(h) APPEALS AND FINAL AGENCY ACTION.—

“(1) 33-MONTH PERIOD.—Demands or orders issued by the Secretary or a delegated State are subject to administrative appeal in accordance with the regulations of the Secretary. No State shall impose any conditions which would hinder a lessee's or its designee's immediate appeal of an order to the Secretary or the Secretary's designee. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on the date of enactment of this section, within 33 months from the date such proceeding was commenced or 33 months from the date of such enactment, whichever is later. The 33-month period may be extended by any period agreed upon in writing by the Secretary and the appellant.

“(2) EFFECT OF FAILURE TO ISSUE DECISION.—If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)—

“(A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than \$10,000; and

“(B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is \$10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with title 5 of the United States Code.

“(i) COLLECTIONS OF DISPUTED AMOUNTS DUE.—To expedite collections relating to disputed obligations due within the seven-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiving or reducing interest and allowing offsetting of obligations among leases.

“(j) ENFORCEMENT OF A CLAIM FOR JUDICIAL REVIEW.—In the event a demand subject to this section is properly and timely commenced, the obligation which is the subject of the demand may be enforced beyond the seven-year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee or its designee of the final agency action.

“(k) IMPLEMENTATION OF FINAL DECISION.—In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

“(l) STAY OF PAYMENT OBLIGATION PENDING REVIEW.—Any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the person periodically demonstrates to the satisfaction of the Secretary that such person is financially solvent or otherwise able to pay the obligation. In the event the person is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any person ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument”.

“(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended by inserting after the item relating to section 114 the following new item:

“Sec 115. Secretarial and delegated States' actions and limitation periods.”.

SEC. 5. ADJUSTMENT AND REFUNDS.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) is amended by inserting after section 111 the following.

“SEC. 111A. ADJUSTMENTS AND REFUNDS.

“(a) ADJUSTMENTS TO ROYALTIES PAID TO THE SECRETARY OR A DELEGATED STATE.—

“(1) If, during the adjustment period, a lessee or its designee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee or its designee shall make such adjust-

ment or request a refund within a reasonable period of time and only during the adjustment period. The filing of a royalty report which reflects the underpayment or overpayment of an obligation shall constitute prior written notice to the Secretary or the applicable delegated State of an adjustment.

“(2)(A) For any adjustment, the lessee or its designee shall calculate and report the interest due attributable to such adjustment at the same time the lesser or its designee adjusts the principal amount of the subject obligation, except as provided by subparagraph (B).

“(B) In the case of a lessee or its designee who determines that subparagraph (A) would impose a hardship, the Secretary or such delegated State shall calculate the interest due and notify the lessee or its designee within a reasonable time of the amount of interest due, unless such lessee or its designee elects to calculate and report interest in accordance with subparagraph (A).

“(3) An adjustment or a request for a refund for an obligation may be made after the adjustment period only upon written notice to and approval by the Secretary or the applicable delegated State, as appropriate, during an audit of the period which includes the production month for which the adjustment is being made. If an overpayment is identified during an audit, then the Secretary or the applicable delegated State, as appropriate, shall allow a credit or refund in the amount of the overpayment.

“(4) For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 115.

“(b) REFUNDS.—

“(1) IN GENERAL.—A request for refund is sufficient if it—

“(A) is made in writing to the Secretary and, for purposes of section 115, is specifically identified as a demand;

“(B) identifies the person entitled to such refund;

“(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought; and

“(D) provides the reasons why the payment was an overpayment.

“(2) PAYMENT BY SECRETARY OF THE TREASURY.—The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.

“(3) PAYMENT PERIOD.—A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this Act.

“(4) PROHIBITION AGAINST REDUCTION OF REFUNDS OR CREDITS.—In no event shall the Secretary or any delegated State directly or indirectly claim or offset any amount or amounts against, or reduce any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 115 of this Act.”

“(b) CLERICAL AMENDMENT.—The table of contents in section 1 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701) is amended by inserting after the item relating to section 111 the following new item:

“Sec. 111A. Adjustments and refunds.”.

SEC. 6. ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES.

(a) LESSEE OR DESIGNEE INTEREST.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended by adding after subsection (g) the following:

“(h) Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of the Internal Revenue Code of 1986, but determined without regard to the sentence following subparagraph (B) of section 6621(a)(1). Interest which has accrued on any

overpayment may be applied to reduce an underpayment. This subsection applies to overpayments made later than six months after the date of enactment of this subsection or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act, and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.”

(b) LIMITATION ON INTEREST.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982, as amended by subsection (a), is further amended by adding at the end the following:

“(i) Upon a determination by the Secretary that an excessive overpayment (based upon all obligations of a lessee or its designee for a given reporting month) was made for the sole purpose of receiving interest, interest shall not be paid on the excessive amount of such overpayment. For purposes of this Act, an ‘excessive overpayment’ shall be the amount that any overpayment a lessee or its designee pays for a given reporting month (excluding payments for demands for obligations determined to be due as a result of judicial or administrative proceedings or agreed to be paid pursuant to settlement agreements) for the aggregate of all of its Federal leases exceeds 10 percent of the total royalties paid that month for those leases.”.

(c) ESTIMATED PAYMENT.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) and (b), is further amended by adding at the end the following:

“(j) A lessee or its designee may make a payment for the approximate amount of royalties (hereinafter in this subsection ‘estimated payment’) that would otherwise be due for such lease by the date royalties are due for that lease. When an estimated payment is made, actual royalties are payable at the end of the month following the month in which the estimated payment is made. If the estimated payment was less than the amount of actual royalties due, interest is owed on the underpaid amount. If the estimated payment exceeds the actual royalties due, interest is owed on the overpayment. If the lessee or its designee makes a payment for such actual royalties, the lessee or its designee may apply the estimated payment to future royalties. Any estimated payment may be adjusted, recouped, or reinstated at any time by the lessee or its designee.”.

(d) VOLUME ALLOCATIONS OF OIL AND GAS PRODUCTION.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) through (c), is amended by adding at the end the following:

“(k)(1) Except as otherwise provided by this subsection—

“(A) a lessee or its designee of a lease in a unit or communitization agreement which contains only Federal leases with the same royalty rate and funds distribution shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee;

“(B) a lessee or its designee of a lease in any other unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the volume of oil and gas produced from such agreement and allocated to the lease in accordance with the terms of the agreement; and

“(C) a lessee or its designee of a lease that is not contained in a unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee.

“(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee’s liability for royalties on oil or gas production based on the share of production allocated to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

“(3) For any unit or communitization agreement, if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary or the delegated State for approval and make payments in accordance with such approved alternative method so long as such alternative method does not reduce the amount of the royalty obligation.

“(4) The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar

year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following such calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term ‘marginal property’ means a lease that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.

“(5) Not later than two years after the date of the enactment of this subsection, the Secretary shall issue any appropriate demand for all outstanding royalty payment disputes regarding who is required to report and pay royalties on production from units and communitization agreements outstanding on the date of the enactment of this subsection, and collect royalty amounts owed on such production.”

(e) PRODUCTION ALLOCATION.—Section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by subsections (a) through (d), is amended by adding at the end the following:

“(1) The Secretary shall issue all determinations of allocations of production for units and communitization agreements within 120 days of a request for determination. If the Secretary fails to issue a determination within such 120-day period, the Secretary shall waive interest due on obligations subject to the determination until the end of the month following the month in which the determination is made.”

(f) NEW ASSESSMENT TO ENCOURAGE PROPER ROYALTY PAYMENTS.—

(1) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721), as amended by section 4(a), is further amended by adding at the end the following:

“SEC. 116. ASSESSMENTS.

“Beginning eighteen months after the date of enactment of this section, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on a person who chronically submits erroneous reports under this Act. Assessments under this Act may only be issued as provided for in this section.”

(2) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 115 the following new item:

“Sec. 116. Assessments.”.

(g) LIABILITY FOR ROYALTY PAYMENTS.—Section 102(a) of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1712(a)) is amended to read as follows:

“(a) In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shall make such payments in the time and manner as may be specified by the Secretary or the applicable delegated State. A lessee may designate a person to make all or part of the payments due under a lease on the lessee’s behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee. Notwithstanding any other provision of this Act to the contrary, a designee shall not be liable for any payment obligation under the lease. The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.”

(h) CLERICAL AMENDMENTS.—(1) The heading of section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1721) is amended to read as follows:

“ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES”.

(2) The item relating to section 111 in the table of contents in section 1 of such Act (30 U.S.C. 1701) is amended to read as follows:

“Sec. 111. Royalty terms and conditions, interest, and penalties.”.

SEC. 7 ALTERNATIVES FOR MARGINAL PROPERTIES.

(a) IN GENERAL.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), as amended by section 6 of this Act, is further amended by adding at the end the following:

“SEC. 117. ALTERNATIVES FOR MARGINAL PROPERTIES.

“(a) DETERMINATION OF BEST INTERESTS OF STATE CONCERNED AND THE UNITED STATES.—The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c). If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production: *Provided*, That if royalty payments from a lease or leases, or well or wells are not shared with any State, such determination shall be made solely by the Secretary.

“(b) PREPAYMENT OF ROYALTY.—

“(1) IN GENERAL.—Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a), the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average \$500 per month in total royalties shall be effectuated under this section not earlier than two years after the date of enactment of this section and, any prepayment which is greater than an average \$500 per month in total royalties shall be effectuated under this section not earlier than three years after the date of enactment of this section. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee’s agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this Act. Such terms may—

“(A) provide for prepayment that does not result in a loss of revenue to the United States in present value terms;

“(B) include provisions for receiving additional prepayments or royalties for developments in the lease or leases or well or wells that deviate significantly from the assumptions and facts on which the valuation is determined; and

“(C) require the lessee or its designee to provide such periodic production reports as may be necessary to allow the Secretary and the State concerned to monitor production for the purposes of subparagraph (B).

“(2) STATE SHARE.—A prepayment under this section shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

“(3) SATISFACTION OF OBLIGATION.—Except as may be provided in the terms and conditions established by the Secretary under subsection (b), a lessee or its designee who makes a prepayment under this section shall have satisfied in full the lessee’s obligation to pay royalty on the production stream sold from the lease or leases or well or wells.

“(c) ALTERNATIVE ACCOUNTING AND AUDITING REQUIREMENTS.—Within one year after the date of the enactment of this section, the Secretary or the delegated State shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop properties subject to subsection (a): *Provided*, That such relief will only be available to lessees in a State that concurs, which concurrence is not required if royalty payments from the lease or leases or well or wells are not shared with any State. Prior to granting such relief, the Secretary and, if appropriate, the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act (30 U.S.C. 1701) is amended by adding after the item relating to section 116 the following new item:

“Sec. 117. Alternatives for marginal properties.”.

SEC. 8. APPLICABILITY.

(a) FOGRMA.—With respect to Federal lands, sections 202 and 307 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 and 1755), are no longer applicable. The applicability of those sections to Indian leases is not affected.

(b) OCSLA.—Effective on the date of the enactment of this Act, section 10 of the Outer Continental Shelf Lands Act (43 U.S.C. 1339) is repealed.

SEC. 9. INDIAN LANDS.

The amendments made by this Act shall not apply with respect to Indian lands, and the provision of the Federal Oil and Gas Royalty Management Act of 1982 as in effect on the day before the date of enactment of this Act shall continue to apply after such date with respect to Indian lands.

SEC. 10. PRIVATE LANDS.

This Act shall not apply to any privately owned minerals.

SEC. 11. EFFECTIVE DATE.

Except as provided by section 115(f), section 111(h), section 111(k)(5), and section 117 of the Federal Oil and Gas Royalty Management Act of 1982 (as added by this Act), this Act and the amendments made by this Act, shall apply with respect to the production of oil and gas after the first day of the month following the date of the enactment of this Act.

SEC. 12. SAVINGS CLAUSE.

Nothing in this Act shall be construed to give a State a property right or interest in any federal lease or land.

PURPOSE OF THE MEASURE

S. 1014, as reported by the Committee, would improve the management of royalties from Federal land and Outer Continental Shelf oil and gas leases. Among other things, S. 1014 would provide: faster audit, royalty collection and appeals processes, resulting in collection of moneys owed to the United States in a shorter period of time; shorter records retention requirements for industry, resulting in less burdensome and costly recordkeeping; a faster appeals process at the Department of the Interior, resulting in quicker resolution of money disputes between the United States and royalty payors; reciprocal interest requirements to be applicable to the United States and industry, resulting in the Federal Government getting interest in late payments and underpayments and industry getting interest on overpayments; quicker correction of underpayment/overpayment problems by limiting the period within which lessees can make adjustments or request refunds; pre-payment of royalties on “marginal properties” by small operators, thereby alleviating reporting requirements; and a more cost-effective approach to royalty management by streamlining and simplifying certain royalty requirements and practices.

BACKGROUND AND NEED

Oil and gas royalties from Federal onshore and Outer Continental Shelf (OCS) leases are accounted for, collected, distributed, and audited by the Minerals Management Service (MMS) of the Department of the Interior. The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) directs Interior to establish “a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine the oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner.”

In the 14 years since enactment of FOGRMA, serious problems have arisen with the way courts and consequently the MMS have interpreted the period of time within which collection of amounts due under oil and gas leases can be undertaken. At least one Federal court has ruled that MMS has six years to commence an audit of production royalties and still another six years to complete such an audit. This means that MMS could take up to 12 years to verify that an obligation had been underpaid. During this protracted audit process, interest would accrue on the underpaid amount and the royalty payor owing the amount would be required to maintain its production records, both of which could be very costly. Conversely, if the United States is overpaid, the payor loses the time value of the money it mistakenly pays and is not able to recover interest on the overpayment.

SUMMARY OF MAJOR PROVISIONS

S. 1014 addresses these problems by providing the United States and companies reciprocal rights to interest on underpayments and overpayments. And, while courts differ as to how long MMS has to begin and complete an audit, S. 1014 would provide certainty by establishing a 7-year period of limitation within which administrative or judicial actions relating to an obligation must be brought or be barred. Certain enumerated exceptions would toll the running of the period. In addition, the bill would establish a records retention period of seven years to coincide with the period of limitation.

Another issue addressed in S. 1014 is the lengthy administrative appeals process and the time within which it takes to get a final agency determination on a royalty matter in dispute. Royalty disputes presently are taken to the Director of MMS, whose decision can then be appealed to the Interior Board of Land Appeals (IBLA). In addition, the Secretary can take jurisdiction of a matter, after which time an appellant can further pursue relief in U.S. district court. All of the administrative appeals can be quite time consuming, particularly in light of a backlog of cases pending before IBLA that runs two years or more. Presently, more than \$450 million in disputed claims languish in a bureaucratic appeals process at the Interior Department and continue to lose value. S. 1014 would simplify this process by requiring MMS to issue a final Director's decision within one year and the Secretary to issue a final agency decision in any administrative proceeding within 33 months of commencement. As a result, significant cost savings are expected to be realized.

S. 1014 would simplify the royalty collections process by allowing the offsetting of underpayments and overpayments against each other to determine a net amount owed or overpaid. This would help eliminate the burdensome process of handling refund requests on overpayments and the pursuit of interest on underpayments.

One problem recognized by MMS and industry alike is the provision in section 10 of the Outer Continental Shelf Lands Act (OCSLA) requiring OCS lessees to file requests for refunds of overpayments within two years of the date of which such overpayments were made. Under the OCSLA, interest is not paid on overpayments. S. 1014 would correct these problems by extending the pe-

riod within which to request refunds from two to six years and by authorizing the payment of interest on such amounts.

Other provisions in S. 1014 would: simply audit and royalty collection requirements, allow waiver of obligations that would not be cost-effective to account for and collect; and eliminate formal notice requirements before seeking to enforce the OCSLA.

Because of its potential to raise \$52 million in new revenues over seven years, a version of S.1014 as introduced was incorporated in the Balanced Budget Act of 1995, which was vetoed by the President on December 6, 1995. Following the President's veto, Committee staff met with representatives of the Administration to resolve differences over the text of the legislation. As reported by the Committee, S. 1014 reflects agreements reached in that process.

LEGISLATIVE HISTORY

S. 1014 was introduced on June 30, 1995 by Senator Nickles. Senators Murkowski and Domenici joined as cosponsors on July 24 and August 10, respectively. Chairman Nickles held a hearing on the Subcommittee on Energy Production and Regulation on S. 1014 on September 14, 1995.

In the House an identical companion, H.R. 1975, was introduced on June 30 by Reps. Calvert, Brewster, Dooley, Tauzin and Lucas. A hearing was held by the Subcommittee on Energy and Mineral Resources on July 18, 1995. H.R. 1975 was reported from the House Committee on Resources on March 28, 1996.

At the business meeting on May 1, 1996, an amendment to S. 1014 in the nature of a substitute was offered by Senator Murkowski and Senator Johnston, and the Committee ordered the bill favorably reported, as amended.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Senate Committee on Energy and Natural Resources, in open business session on Wednesday, May 1, 1996, by a unanimous voice vote of a quorum present, recommended that the Senate pass S. 1014 as described herein.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

The title of the Act is the "Federal Oil and Gas Royalty Simplification and Fairness Act of 1996."

SECTION 2—DEFINITIONS

This section adds several new definitions to section 3 of the Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982. The definitions are self-explanatory.

SECTION 3—DELEGATION OF ROYALTY COLLECTIONS AND RELATED ACTIVITIES

Section 3(a) amends section 205 of FOGRMA as follows:

Subsection 205(a) authorizes the Secretary to delegate, for royalty management enforcement purposes, all or part of the authorities and responsibilities of the Secretary to: conduct audits, inspec-

tions and investigations; receive and process production and financial reports; correct erroneous report data; perform automated verification; and issue demands, subpoenas, and orders to perform restructured accounting to any State with respect to all Federal land within that State.

Subsection 205(b) authorizes the Secretary to delegate the authorities and responsibilities requested by a State, if the Secretary finds that: (1) it is likely the State will provide adequate resources to perform delegated functions; (2) the State has demonstrated that it will effectively administer rules and regulations promulgated by the Secretary under the Act; (3) the delegation of functions will not create an unreasonable burden on the lessees within the State; (4) the State will adopt standardized reporting procedures for royalty and production accounting purposes; (5) the State agrees to follow regulations issued by the Secretary regarding valuation of production; and (6) the State will enact laws and regulations to have authority to carry out and enforce delegated functions.

Subsection 205(c) requires the Secretary to issue a ruling as to the consistency of a State's proposal within 90 days after submission, after notice and opportunity for a hearing. The Secretary must set forth the reasons for any unfavorable ruling and state whether the Secretary will agree to delegate to the State if the State meets the conditions set forth in the ruling.

Subsection 205(d) requires the Secretary to promulgate standards and regulations within 12 months of enactment pertaining to the authorities and responsibilities to be delegated to States for royalty management enforcement purposes, including standards and regulations pertaining to: audits to be performed; records and accounts to be maintained; reporting procedures to be required by States; receipt and processing of production and financial reports; correction of erroneous report data; performance of automated verification; issuance of standards and guidelines in order to avoid duplication of effort; transmission of report data to the Secretary; and issuance of demands, subpoenas, and orders to perform restructured accounting. In carrying out this section, the Secretary is to assure that such standards and regulations will result in a uniform and effective royalty management system among the States. State records and accounts must be sufficient enough to allow the Secretary to monitor performance of a State in performing delegated functions.

Subsection 205(e) authorizes the Secretary to revoke any delegation, after notice and opportunity for a hearing, if the Secretary finds that any State is in violation of any requirement or any rule. The Secretary is required to provide written notice to the delegated State and a reasonable opportunity to take corrective action, and if the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure may result in an underpayment of an obligation due the United States by such lessee, and that such underpayment may be uncollected without Secretarial intervention, the Secretary is authorized to issue a demand or order prior to or absent the withdrawal of delegated authority.

Subsection 205(f) requires the Secretary to compensate any State for those costs necessary to carry out delegated activities. Payment

is to be made no less than every quarter during the fiscal year, and compensation to a State is not to exceed the Secretary's reasonably anticipated expenditure for performance of the delegated activities by the Secretary. Such costs are allocable for the purposes of section 35(b) of the Mineral Leasing Act to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. Any further allocation of costs under section 35(b) made by the Secretary for oil and gas activities, other than those costs to compensate States for delegated activities under this Act, shall be only those costs associated with onshore oil and gas activities and may not include any duplication of costs allocated pursuant to the previous sentence. Nothing in this section affects the Secretary's authority to make allocations under section 35(b) for non-oil and gas mineral activities. All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.

Section 3(b) makes a clerical amendment.

SECTION 4—SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS

Section 4(a) amends section 115 of FOGPMA as follows:

Subsection 115(a) requires that the respective duties of the Secretary, States and lessees be performed in a timely manner.

Subsection 115(b) requires that judicial proceedings or demands relating to an obligation be commenced within seven years of the time an obligation becomes due or be time barred. If a judicial proceeding or demand is barred, the Secretary, a State, or a lessee cannot take any other further action regarding an obligation and cannot pursue any other equitable or legal remedy respecting an action on or enforcement of the obligation.

Subsection 115(c) provides that an obligation becomes due when the right to enforce it is fixed, which occurs on the last day of the calendar month following the month in which oil or gas is produced.

Subsection 115(d) provides that the seven-year limitation period can be tolled only by: a written tolling agreement; a subpoena seeking records relating to the obligation; misrepresentation or concealment; or an order to perform a restructured accounting.

Subsection 115(e) provides that the limitation period can be terminated by notification of the lessee by the Secretary or a State that a time period is closed to further audit or by agreement among the lessee, the Secretary and a State.

Subsection 115(f) establishes a records retention requirement coinciding with the seven-year limitation period.

Subsection 115(g) bars the Secretary from performing or requiring accounting, reporting, or audit activities if the cost of performing such activity exceeds the expected amount to be collected.

Subsection 115(h) establishes a 33-month limitation on administrative appeals at the Department of the Interior and a process for determining final agency action for failure to act within that period.

Subsection 115(i) calls for at least one settlement conference relating to disputed obligations in order to expedite collections.

Subsection 115(j) provides for enforcement of demands properly and timely issued during the six-year period beyond the seven-year limitation period.

Subsection 115(k) saves judicial proceedings or demands timely commenced from lapse of the limitation period.

Subsection 115(l) stays payment of an obligation pending administrative or judicial proceedings, so long as financial assurance requirements can be met.

Section 4(b) makes a clerical amendment.

SECTION 5—ADJUSTMENTS AND REFUNDS

Section 5(a) amends FOGRMA section 111 by adding a new section 111A as follows:

Subsection (a) allows lessees to make adjustments or refund requests to correct underpayments or overpayments of obligations if made within a reasonable period of time within the adjustment period which is the six-year period following the date when an obligation becomes due. Lessees are required to calculate and report the interest due that is attributable to adjustments, unless a hardship.

Subsection (b) requires that refund requests meet certain requirements, and the Secretary is required to promptly notify States of refund requests. Following certification of the refund amount by the Secretary of the Interior, the Secretary of the Treasury is required to make the refund out of amounts received as current receipts from lease sales, bonus bids, royalties, interest, and rentals of public lands and Outer Continental Shelf lands. Refunds are required to be paid within 120 days of the date requested. The Secretary or a State cannot claim or offset any amount by the amount of any obligation the enforcement of which is barred by the seven-year limitation period.

Section 5(b) makes a clerical amendment.

SECTION 6—ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES

Section 6(a) amends section 111 of FOGRMA by adding a new subsection (h), which authorizes the payment of interest to lessees who make overpayments from amounts received as current receipts from lease sales, bonus bids, royalties, interest, and rentals of public lands and Outer Continental Shelf lands. Accrued interest on an overpayment may be applied to reduce an underpayment.

Section 6(b) adds a new subsection (i), which provides that interest is not allowed for “excessive overpayments,” defined as the amount that any overpayment for a reporting month for the aggregate of all Federal leases exceeds 10 percent of total royalties paid for those leases that month.

Section 6(c) adds a new subsection (j), which authorizes lessees to make estimated payments. When estimated payments are used, actual royalties are due and payable at the end of the month following the month in which the estimated payment is made. Once actual royalties are paid, estimated payments can be applied to future royalties, and estimated payments can be adjusted, recouped or reinstated at any time.

Section 6(d) adds a new subsection (k), which requires lessees with leases in unit or communitization agreements containing only Federal leases with the same royalty rates and funds distribution to report and pay oil and gas royalties for each production month based on actual volume of production sold by the lessee. Lessees with leases in any other unit or communitization agreement must report and pay royalties for each production month based on the volume of oil and gas produced and allocated to the lease in accordance with the agreement. Lessees with leases that are not in a unit or communitization agreement must report and pay royalties for each production month based on the actual volume of production sold by the lessee. The subsection also authorizes lessees in unit or communitization agreements to contractually agree to an alternative method of royalty reporting and payment, and requires the Secretary or a State to except “marginal properties” from reporting and payment requirements by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. The term “marginal property” is defined as a lease that produces less than 15 barrels of oil per day or 90,000 cubic feet of gas per day or some combination thereof. And the subsection requires the Secretary to issue demands within two years for all outstanding royalty disputes as to who reports and pays royalties on production from units and communitization agreements outstanding on the date of enactment.

Section 6(e) adds a new subsection (1), which requires the Secretary to issue a determination of allocation of production for units and communitization agreements within 120 days of a request for a determination. If no determination is issued within the 120-day period, interest must be waived until the end of the month following the month in which the determination is made.

Section 6(f) adds a new section 116 to FOGRMA to require the Secretary or a delegated State to impose assessments on lessees who chronically submit erroneous reports.

Section 6(g) amends FOGRMA section 102(a) to require lessees to make payments in the time and manner specified by the Secretary or a delegated State. The subsection authorizes the lessee to designate a person to make payments under a lease on the lessee’s behalf. The person owning operating rights in a lease is primarily liable for its pro rata share of payment obligations under a lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title is secondarily liable for its pro rata share of payment obligations.

Section 6(h) makes a clerical amendment.

SECTION 7—ALTERNATIVES FOR MARGINAL PROPERTIES

Section 7(a) amends FOGRMA to add a new section 117 as follows:

Subsection 117(a) requires the Secretary and the State concerned to determine the amount of marginal production from a lease or leases or well or wells subject to a prepayment or regulatory relief. If a State concerned does not consent, the prepayments or regulatory relief cannot be allowed. If royalty payments from leases or wells are not shared with a State, the determination must be made by the Secretary. The subsection authorizes the Secretary to accept

a prepayment of royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term, if the lessee agrees. Any prepayment that is less than an average \$500 per month must be made within 2 years of enactment and any prepayment that is greater than an average of \$500 per month must be made within 3 years after the date of enactment. Acceptance of the prepayment by the Secretary and the State can be conditioned upon several factors: prepayments do not result in a loss of revenue to the United States in present value terms; additional royalties or prepayments can be received for developments in leases or wells that vary significantly from assumptions and facts used to make valuation determinations; and provision of periodic production reports by the lessee to allow the Secretary and the State to monitor production. Prepayments are to be shared with States the same way royalty are shared, and prepayments satisfy in full the lessee's obligation to pay royalty on the production stream from the lease or well. The subsection requires the Secretary or delegated State to provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop marginal properties, if the State concurs. Concurrence is not required if royalties are not shared with the State. Prior to providing such relief, the Secretary and the State must agree to the type of marginal wells and relief that would be in the best interests of the United States or the State.

Section 7(b) makes a clerical amendment.

SECTION 8—APPLICABILITY

Section (a) declares that FOGDMA sections 202 and 307 are no longer applicable to federal lands. The applicability of those to Indian leases is not affected.

Subsection (b) repeals section 10 of the Outer Continental Shelf Lands Act.

SECTION 9—INDIAN LANDS

This section states that the amendments made by this Act do not apply to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 as in effect prior to enactment will continue to apply after enactment to Indian lands.

SECTION 10—PRIVATE LANDS

This section states that the Act does not apply to privately owned minerals.

SECTION 11—EFFECTIVE DATE

This section states that, except as otherwise noted, the provisions of the Act apply to production of oil and gas after the first day of the month following enactment of the Act.

SECTION 12—SAVINGS CLAUSE

This section states that nothing in the Act shall be construed to give a State a property right or interest in any federal lease or land.

COST AND REGULATORY CONSIDERATIONS

The Congressional Budget Office estimates that enactment of S. 1014 would result in a net decrease in direct spending of about \$36 million over the 1997–2002 period. The full CBO cost estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 8, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1014, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

Enactment of S. 1014 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1014.
2. Bill title: Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.
3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources on May 1, 1996.
4. Bill purpose: S. 1014 would make a number of changes to procedures and obligations related to the collection of royalty payments on oil and gas extracted from federal lands, both onshore and offshore. The bill would:

Expand the Secretary of the Interior's authority to delegate to the states the collection of royalties and related activities, and revise how the federal government reimburses states for the costs of carrying out royalty-related activities;

Set a seven-year statute of limitations for commencing a judicial proceeding or demand related to a royalty obligations, starting from the date on which the obligation become due;

Require the Secretary to complete administrative appeals, including those pending when the bill is enacted, within 33 months, unless the Secretary and the appellant agree to an extension;

Establish a six-year adjustment period, beginning on the date an obligation becomes due, within which lessees may request correction of an overpayment or underpayment, and require that refunds be paid or denied within 120 days;

Require the federal government to pay lessees interest on royalty overpayments at the rate specified in the Internal Revenue Code;

For federal leases within unit or communization agreements, revise the method of reporting the royalties owed by each lessee; and

For marginal properties, authorize the Secretary to accept a prepayment for royalties instead of continued monthly royalty payments on actual production.

5. Estimated cost to the Federal Government: CBO estimates that enacting S. 1014 would result in a net decrease in direct spending of about \$36 million over the 1997–2002 period. Most of that estimated change would result from accelerating payments to the government that would otherwise be made in later years. The following table summarizes the estimated budgetary impact of S. 1014.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
DIRECT SPENDING							
Spending under current law:							
Offsetting receipts:							
Estimated budget authority	– 3,758	– 3,923	– 3,665	– 3,705	– 3,556	– 3,706	– 3,934
Estimated outlays	– 3,758	– 3,923	– 3,665	– 3,705	– 3,556	– 3,706	– 3,934
Spending: States' share of receipts:							
Estimated budget authority	508	515	499	506	520	535	551
Estimated outlays	508	515	499	506	520	535	551
Net direct spending:							
Estimated budget authority	– 3,250	– 3,408	– 3,166	– 3,199	– 3,036	– 3,171	– 3,383
Estimated outlays	– 3,250	– 3,408	– 3,166	– 3,199	– 3,036	– 3,171	– 3,383
Proposed changes:							
Offsetting receipts:							
Estimated budget authority		– 2	– 4	– 10	– 11	– 10	– 8
Estimated outlays		– 2	– 4	– 10	– 11	– 10	– 8
Spending: States' share of receipts:							
Estimated budget authority		1	3	2	2	1	(¹)
Estimated outlays		1	3	2	2	1	(¹)
Net direct spending:							
Estimated budget authority		– 1	– 1	– 8	– 9	– 9	– 8
Estimated outlays		– 1	– 1	– 8	– 9	– 9	– 8
Spending under S. 1014:							
Offsetting receipts:							
Estimated budget authority	– 3,758	– 3,925	– 3,669	– 3,715	– 3,567	– 3,716	– 3,942
Estimated outlays	– 3,758	– 3,925	– 3,669	– 3,715	– 3,567	– 3,716	– 3,942
Spending: States' share of receipts:							
Estimated budget authority	508	516	502	508	522	536	551
Estimated outlays	508	516	502	508	522	536	551
Net direct spending:							
Estimated budget authority	– 3,250	– 3,409	– 3,167	– 3,207	– 3,045	– 3,180	– 3,391
Estimated outlays	– 3,250	– 3,409	– 3,167	– 3,207	– 3,045	– 3,180	– 3,391

¹ Less than \$500,000.

The effects of this bill fall within budget functions 300, 800, and 950.

6. Basis of estimate: CBO estimates that enacting S. 1014 would accelerate the collection of offsetting receipts to the Treasury by \$80 million over the 1997–2002 period, net of payments to states of 50 percent of additional onshore collections. Lessees' royalty obligations would generally remain the same under this bill, but some payments would be shifted forward in time.

We estimate that provisions in the bill that fix the statute of limitations at seven years, require appeals to be completed within 33 months, establish a six-year adjustment period, clarify the policy on allocating volumes of production among certain lessees, and allow for royalty prepayments on marginal properties, would shift the collection of about \$72 million in offsetting receipts from years after 2002 into the 1997–2002 period. These amounts are net of

payments to states of their portion of onshore collections. The bill also would allow the federal government to retain more royalty receipts by modifying the calculation of administrative costs to be borne by states. CBO estimates this change would increase the federal government's share of offsetting receipts of about \$8 million over the 1997–2002 period.

Section 6 of the bill would expand the obligations of the federal government to lessees. Beginning September 1, 1996, or six months after enactment (whichever is later), the federal government would be required to pay for credit interest in lessees' overpayments at the rate specified in the Internal Revenue Code. The bill would disallow payment of interest if a lessee's overpayments for a given month exceed 10 percent of the total royalties due on all its federal leases. Such interest payments would be deducted from receipts from bonuses, rents, and royalties, including interest charges collected on underpayments. (The share borne by states would be deducted from their receipts.) According to data provided by the Minerals Management Service, overpayments average about 3 percent of the royalties paid each year. For the purposes of this estimate, we assume that the amount of overpayments would increase slightly (to nearly 5 percent) because any excess payments would now earn interest at a rate 2 percent above the Treasury's rate for short-term (90-day) borrowing. CBO estimates that this provision would increase direct spending, net of reduced payments to states, by about \$44 million over the 1997–2002 period.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending and receipts through 1998. CBO estimates that enacting S. 1014 would affect direct spending by changing the amount collected as offsetting receipts (which are recorded as negative outlays), and direct payments to states for their share of such collections. Therefore, pay-as-you-go procedures would apply to the bill. CBO estimates that enacting this bill would reduce direct spending by about \$2 million over the 1996–1998 period.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays		–1	–1
Change in receipts	(1)	(1)	(1)

¹ Not applicable.

8. Estimated impact on State, local, and tribal governments: S. 1014 contains no intergovernmental mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments.

CBO estimates that the net impact of this bill would be a \$9 million increase in payments to state governments over the 1997–2002 period, assuming appropriation of the amounts authorized for reimbursement of administrative costs. States share 50 percent of the royalties from oil and gas leases on federal lands within their borders. They would, therefore, benefit from provisions in this bill that shift the collection of federal oil and gas royalty receipts from years after 2002 into the 1997–2002 period. At the same time, states would pay a larger portion of the administrative costs and would

share in the federal government's expanded obligations to lessees as a result of the bill's provision requiring the payment of interest on lessees' overpayments.

S. 1014 would expand the opportunities for states to seek delegation of responsibility for enforcing and collecting royalties. A state that seeks and accepts delegation would do so voluntarily. As under current law, the federal government would reimburse that state for the costs of carrying out these delegated responsibilities. By changing the procedure used to calculate states' share of royalty receipts, however, the bill would appear to shift some of these costs back to the states.

9. Estimated impact on the private sector: The bill would impose no new private sector mandates, as defined in Public Law 104-4.

10. Previous CBO estimate: On April 30, 1996, CBO prepared a cost estimate for H.R. 1975, as ordered reported by the House Committee on Resources on March 28, 1996. Provisions affecting direct spending are nearly identical and, hence, CBO's estimates of changes in direct spending are the same for the two bills.

H.R. 1975 and S. 1014 differ in how they would modify the method of calculating the share of administrative costs borne by states. Both bills would authorize federal reimbursement for costs incurred by states to carry out delegated royalty management responsibilities, as under current law. In addition, both bills would modify the current method of sharing receipts by directing that these federally-reimbursed state costs be deducted from gross receipts in the same manner as direct federal administrative costs before determining the states' share. The effect of this change would be to reduce the states' share of royalty receipts by a portion of the cost of delegated activities. H.R. 1975 would authorize appropriations to reimburse states one year later for receipts lost as a result of this change. S. 1014 would not authorize such reimbursement; therefore, we estimate no increased discretionary spending and a smaller increase in the share of receipts paid to states under S. 1014.

11. Estimate prepared by: Federal Cost Estimate: Victoria V. Heid. State and Local Government Impact: Marjorie Miller. Private Sector Impact: Amy Downs.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

FEDERAL MANDATE EVALUATION

The Congressional Budget Office federal mandate evaluation has been requested but was not received at the time the report filed. When the report is available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in implementing S. 1014. The regulatory burden imposed by FOGDMA on the private sector would be reduced under S. 1014 by shortening the audit period, reducing records retention requirements, accelerating the

administrative appeals process, and simplifying the royalty management program. To the extent the legislation would impose new regulatory requirements on the federal government, some of those requirements would be shifted to States requesting delegation of royalty management functions.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

There are likely to be significant paperwork requirements for the Department of the Interior.

EXECUTIVE COMMUNICATIONS

A Statement of Administration Position has not been submitted as of the date this report was filed. When the SAP is available, the Chairman will request that it be printed in the Congressional Record for the advice of the Senate.

ADDITIONAL VIEWS

I am pleased the Senate Energy and Natural Resources Committee has taken action on S. 1014, the "Federal Oil and Gas Royalty Simplification and Fairness Act of 1996." This legislation is a good step forward which will create greater efficiency for federal mineral royalty collections on public lands. The bill will simplify the royalty collection process and create a level playing field for the federal government, the states, and oil and gas lessees on federal lands.

However, I am disappointed the Committee did not include language that would strengthen the states' ability to assume many of the royalty collection and enforcement functions. Although there is language in S. 1014 authorizing the Secretary of Interior to delegate royalty collection functions to the states, it is too broad and gives the Department of Interior too much discretion. Unless Congress is willing to push the Department of Interior to allow the states to assume the royalty collection functions, it will never happen.

Giving the states the opportunity to conduct and enforce royalty collection activities for minerals on federal lands is something we have been working on for a long time. The State of Wyoming has done a number of studies evaluating the royalty collection program at the Minerals Management Service (MMS) and believes it can do the same job more cheaply and effectively. In 1993, then Governor Mike Sullivan testified before the House natural Resources Committee that Wyoming performs a nearly identical process of collecting auditing royalties on state lands for roughly 10 percent of what it costs the MMS.

The time has come for Congress to make some fundamental changes in the way government operates. Delegating royalty collection functions to the states is a true power transfer that will streamline the royalty collection process, reduce costs and make the government more efficient to operate. In our discussions regarding this bill, a number of proposals have been considered to resolve this issue, including establishing a pilot program to allow the State of Wyoming to assume the royalty collection functions. As this bill moves forward, I am interested in working with the committee to try and develop a workable solution that will address the concerns of the State of Wyoming, the federal government and the lessees operating on federal lands.

CRAIG THOMAS.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1014, as ordered reported, as shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL OIL AND GAS ROYALTY MANAGEMENT ACT OF 1982 (30 U.S.C. *et seq.*)

TABLE OF CONTENTS

*	*	*	*	*	*
Sec. 111.	<i>Royalty terms and conditions,</i>	<i>interest, and penalties</i>	【and payments】.		
Sec. 111A.	<i>Adjustments and Refunds.</i>				
*	*	*	*	*	*
Sec. 115.	<i>Secretarial and delegated States' actions and limitation periods.</i>				
Sec. 116.	<i>Assessments.</i>				
Sec. 117.	<i>Alternatives for marginal properties.</i>				
*	*	*	*	*	*
Sec. 205.	<i>Delegation of royalty collections and related activities</i>	【to States】.			
*	*	*	*	*	*

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

* * * * *

【(7) “lessee” means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease;】

(7) “lessee” means any person to whom the United States issues an oil and gas lease or any person to whom operating rights in a lease have been assigned;

* * * * *

(15) “Secretary” means the Secretary of the Interior or his designee; 【and】

(16) “State” means the several States of the Union, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands【.】;

(17) “adjustment” means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify and underpayment or overpayment on an obligation;

(18) “administrative proceeding” means any Department of the Interior agency process in which a demand, decision or order issued by the Secretary or a delegated State is subject to appeal or has been appealed;

(19) “assessment” means any fee or charge levied or imposed by the Secretary or a delegated State other than—

(A) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(B) any interest; or

(C) any civil or criminal penalty;

(20) “commence” means—

(A) with respect to a judicial proceeding, the service of a complaint, petition, counterclaim, cross claim, or other pleading seeking affirmative relief or seeking credit or recoupment: Provided, That if the Secretary commences a judicial proceeding against a designee, the Secretary shall give notice of that commencement to the lessee who designated the designee, but the Secretary is not required to give notice to other lessees who may be liable pursuant to section 102(a) of this Act, for the obligation that is the subject to the judicial proceeding; or

(B) with respect to a demand, the receipt by the Secretary or a delegated State or a lessee or its designee (with written notice to the lessee who designated the designee) of the demand;

(21) “credit” means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;

(22) “delegated State” means a State which, pursuant to an agreement or agreements under section 205 of this Act, performs authorities, duties, responsibilities, or activities of the Secretary;

(23) “demand means—

(A) “an order to pay issued by the Secretary or the applicable delegated State to a lessee or its designee (with written notice to the lessee who designated the designee) that has a reasonable basis to conclude that the obligation in the amount of the demand is due and owing; or

(B) “a separate written request by a lessee or its designee which asserts an obligation due the lessee or its designee that provides a reasonable basis to conclude that the obligation in the amount of the demand is due and owing, but does not mean any royalty or production report, or any information contained therein, required by the Secretary or a delegated State;

(24) “designee” means the person designated by a lessee pursuant to section 102(a) of this Act, with such written designation effective on the date such designation is received by the Secretary and remaining in effect until the Secretary receives notice in writing that the designation is modified or terminated;

(25) “obligation” means—

(A) any duty of the Secretary or, if applicable, a delegated State—

(i) to take oil or gas royalty in kind; or

(ii) to pay, refund, offset, or credit monies including (but not limited to)—

(I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale; or

- (II) any interest; and
 (B) any duty of a lessee or its designee (subject to the provisions of section 102(a) of this Act)—
 (i) to deliver oil or gas royalty in kind; or
 (ii) to pay, offset or credit monies including (but not limited to)—
 (I) the principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;
 (II) any interest;
 (III) any penalty; or
 (IV) any assessment,
 which arises from or relates to any lease administered by the Secretary for, or any mineral leasing law related to, the exploration, production and development of oil or gas on Federal lands or the Outer Continental Shelf;
- (26) “order to pay” means a written order issued by the Secretary or the applicable delegated State to a lessee or its designee (with notice to the lessee who designated the designee) which—
 (A) asserts a specific, definite, and quantified obligation claimed to be due, and
 (B) specifically identifies the obligation by lease, production month and monetary amount of such obligation claimed to be due and ordered to be paid, as well as the reason or reasons such obligation is claimed to be due, but such term does not include any other communication or action by or on behalf of the Secretary or a delegated State;
- (27) “overpayment” means any payment by a lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;
- (28) “payment” means satisfaction, in whole or in part, of an obligation;
- (29) “penalty” means a statutorily authorized civil fine levied or imposed for a violation of this Act, any mineral leasing law, or a term or provision of a lease administered by the Secretary;
- (30) “refund” means the return of an overpayment;
- (31) “State concerned” means, with respect to a lease, a State which receives a portion of royalties or other payments under the mineral leasing laws from such lease;
- (32) “underpayment” means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation; and
- (33) “United States” means the United States Government and any department, agency, or instrumentality thereof, the several States, the District of Columbia, and the territories of the United States.

* * * * *

DUTIES OF LESSEES, OPERATORS, AND MOTOR VEHICLE TRANSPORTERS

SEC. 102. (a) [A lessee]

[(1)] *In order to increase receipts and achieve effective collections of royalty and other payments, a lessee who is required to make any royalty or other payment under a lease or under the mineral leasing laws shall make such payments in the time and manner as may be specified by the Secretary[; and] or the applicable delegated State. [(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment the lessee may have made of the obligation to make any royalty or other payment under a lease or under the mineral leasing laws.] A lessee may designate a person to make all or part of the payments due under a lease on the lessee's behalf and shall notify the Secretary or the applicable delegated State in writing of such designation, in which event said designated person may, in its own name, pay, offset or credit monies, make adjustments, request and receive refunds and submit reports with respect to payments required by the lessee. Notwithstanding any other provision of this Act to the contrary, a designee shall not be liable for any payment obligation under the lease. The person owning operating rights in a lease shall be primarily liable for its pro rata share of payment obligations under the lease. If the person owning the legal record title in a lease is other than the operating rights owner, the person owning the legal record title shall be secondarily liable for its pro rata share of such payment obligations under the lease.*

* * * * *

ROYALTY TERMS AND CONDITIONS, INTEREST, AND PENALTIES [AND PAYMENTS]

SEC. 111. * * *

* * * * *

(h) *Interest shall be allowed and paid or credited on any overpayment, with such interest to accrue from the date such overpayment was made, at the rate obtained by applying the provisions of subparagraphs (A) and (B) of section 6621(a)(1) of the Internal Revenue Code of 1986, but determined without regard to the sentence following subparagraph (B) of section 6621(a)(1). Interest which has accrued on any overpayment may be applied to reduce an underpayment. This subsection applies to overpayments made later than six months after the date of enactment of this subsection or September 1, 1996, whichever is later. Such interest shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act, and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such interest payment attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any other recipient designated by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.*

(i) *Upon a determination by the Secretary that an excessive overpayment (based upon all obligations of a lessee or its designee for*

a given reporting month) was made for the sole purpose of receiving interest, interest shall not be paid on the excessive amount of such overpayment. For purposes of this Act, an "excessive overpayment" shall be the amount that any overpayment a lessee or its designee pays for a given reporting month (excluding payments for demands for obligations determined to be due as a result of judicial or administrative proceedings or agreed to be paid pursuant to settlement agreements) for the aggregate of all of its Federal leases exceeds 10 percent of the total royalties paid that month for those leases.

(j) A lessee or its designee may make a payment for the approximate amount of royalties (hereinafter in this subsection "estimated payment") that would otherwise be due for such lease by the date royalties are due for that lease. When an estimated payment is made, actual royalties are payable at the end of the month following the month in which the estimated payment is made. If the estimated payment was less than the amount of actual royalties due, interest is owed on the underpaid amount. If the estimated payment exceeds the actual royalties due, interest is owed on the overpayment. If the lessee or its designee makes a payment for such actual royalties, the lessee or its designee may apply the estimated payment to future royalties. Any estimated payment may be adjusted, recouped, or reinstated at any time by the lessee or its designee.

(k)(1) Except as otherwise provided by this subsection—

(A) a lessee or its designee of a lease in a unit or communitization agreement which contains only Federal leases with the same royalty rate and funds distribution shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee;

(B) a lessee or its designee of a lease in any other unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the volume of oil and gas produced from such agreement and allocated to the lease in accordance with the terms of the agreement; and

(C) a lessee or its designee of a lease that is not contained in a unit or communitization agreement shall report and pay royalties on oil and gas production for each production month based on the actual volume of production sold by or on behalf of that lessee.

(2) This subsection applies only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee's liability for royalties on oil or gas production based on the share of production allocated to the lease in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement.

(3) For any unit or communitization agreement, if all lessees contractually agree to an alternative method of royalty reporting and payment, the lessees may submit such alternative method to the Secretary or the delegated State for approval and make payments in accordance with such approved alternative method so long as such alternative method does not reduce the amount of the royalty obligations.

(4) *The Secretary or the delegated State shall grant an exception from the reporting and payment requirements for marginal properties by allowing for any calendar year or portion thereof royalties to be paid each month based on the volume of production sold. Interest shall not accrue on the difference for the entire calendar year or portion thereof between the amount of oil and gas actually sold and the share of production allocated to the lease until the beginning of the month following such calendar year or portion thereof. Any additional royalties due or overpaid royalties and associated interest shall be paid, refunded, or credited within six months after the end of each calendar year in which royalties are paid based on volumes of production sold. For the purpose of this subsection, the term "marginal property" means a lease that produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof, determined by dividing the average daily production of crude oil and natural gas from producing wells on such lease by the number of such wells, unless the Secretary, together with the State concerned, determines that a different production is more appropriate.*

(5) *Not later than two years after the date of the enactment of this subsection, the Secretary shall issue any appropriate demand for all outstanding royalty payment disputes regarding who is required to report and pay royalties on production from units and communization agreements outstanding on the date of the enactment of this subsection, and collect royalty amounts owed on such production.*

(l) *The Secretary shall issue all determinations of allocations of production for units and communization agreements within 120 days of a request for determination. If the Secretary fails to issue a determination within such 120-day period, the Secretary shall waive interest due on obligations subject to the determination until the end of the month following the month in which the determination is made.*

* * * * *

ADJUSTMENTS AND REFUNDS

SEC. 111A. ADJUSTMENTS AND REFUNDS.

(a) *ADJUSTMENTS TO ROYALTIES PAID TO THE SECRETARY OR A DELEGATED STATE.—*

(1) *If, during the adjustment period, a lessee or its designee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee or its designee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period. The filing of a royalty report which reflects the underpayment or overpayment of an obligation shall constitute prior written notice to the Secretary or the applicable delegated State of an adjustment.*

(2)(A) *For any adjustment, the lessee or its designee shall calculate and report the interest due attributable to such adjustment at the same time the lessee or its designee adjusts the principal amount of the subject obligation, except as provided by subparagraph (B).*

(B) *In the case of a lessee or its designee who determines that subparagraph (A) would impose a hardship, the Secretary or such delegated State shall calculate the interest due and notify the lessee or its designee within a reasonable time of the amount of interest due, unless such lessee or its designee elects to calculate and report interest in accordance with subparagraph (A).*

(3) *An adjustment or a request for a refund for an obligation may be made after the adjustment period only upon written notice to and approval by the Secretary or the applicable delegated State, as appropriate, during an audit of the period which includes the production month for which the adjustment is being made. If an overpayment is identified during an audit, then the Secretary or the applicable delegated State, as appropriate, shall allow a credit or refund in the amount of the overpayment.*

(4) *For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 115.*

(b) **REFUNDS.—**

(1) **IN GENERAL.**—*A request for refund is sufficient if it—*

(A) is made in writing to the Secretary and, for purposes of section 115, is specifically identified as a demand;

(B) identifies the person entitled to such refund;

(C) provides the Secretary information that reasonably enables the Secretary to identify the overpayment for which such refund is sought; and

(D) provides the reasons why the payment was an overpayment.

(2) **PAYMENT BY SECRETARY OF THE TREASURY.**—*The Secretary shall certify the amount of the refund to be paid under paragraph (1) to the Secretary of the Treasury who shall make such refund. Such refund shall be paid from amounts received as current receipts from sales, bonuses, royalties (including interest charges collected under this section) and rentals of the public lands and the Outer Continental Shelf under the provisions of the Mineral Leasing Act and the Outer Continental Shelf Lands Act, which are not payable to a State or the Reclamation Fund. The portion of any such refund attributable to any amounts previously disbursed to a State, the Reclamation Fund, or any recipient prescribed by law shall be deducted from the next disbursements to that recipient made under the applicable law. Such amounts deducted from subsequent disbursements shall be credited to miscellaneous receipts in the Treasury.*

(3) **PAYMENT PERIOD.**—*A refund under this subsection shall be paid or denied (with an explanation of the reason for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this Act.*

(4) *PROHIBITION AGAINST REDUCTION OF REFUNDS OR CREDITS.*—In no event shall the Secretary or any delegated State directly or indirectly claim or offset any amount or amounts against, or reduced any refund or credit (or interest accrued thereon) by the amount of any obligation the enforcement of which is barred by section 115 of this Act.

* * * * *

SECRETARIAL AND DELEGATED STATES' ACTIONS AND LIMITATION PERIODS

SEC. 115. (a) IN GENERAL.—The respective duties, responsibilities, and activities with respect to a lease shall be performed by the Secretary, delegated States, and lessees or their designees in a timely manner.

(b) *LIMITATION PERIOD.*—

(1) *IN GENERAL.*—A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation.

(2) *RULE OF CONSTRUCTION.*—A judicial proceeding or demand that is timely commenced under paragraph (1) against a designee shall be considered timely commenced as to any lessee who is liable pursuant to section 102(a) of this Act for the obligation that is the subject of the judicial proceeding or demand.

(3) *APPLICATION OF CERTAIN LIMITATIONS.*—The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, and section 42 of the Mineral Leasing Act (30 U.S.C. 226–2) shall not apply to any obligation to which this Act applies. Section 3716 of title 31, United States Code, may be applied to an obligation the enforcement of which is not barred by this Act, but may not be applied to any obligation the enforcement of which is barred by this Act.

(c) *OBLIGATION BECOMES DUE.*—

(1) *IN GENERAL.*—For purposes of this Act, an obligation becomes due when the right to enforce the obligation is fixed.

(2) *ROYALTY OBLIGATIONS.*—The right to enforce any royalty obligation for any given production month for a lease is fixed for purposes of this Act on the last day of the calendar month following the month in which oil or gas is produced.

(d) *TOLLING OF LIMITATION PERIOD.*—The running of the limitation period under subsection (b) shall not be suspended, tolled, ex-

tended, or enlarged for any obligation for any reason by any action, including an action by the Secretary or a delegated State, other than the following:

(1) *TOLLING AGREEMENT.*—A written agreement executed during the limitation period between the Secretary or a delegated State and a lessee or its designee (with notice to the lessee who designated the designee) shall toll the limitation period for the amount of time during which the agreement is in effect.

(2) *SUBPOENA.*—

(A) The issuance of a subpoena to a lessee or its designee (with notice to the lessee who designated the designee, which notice shall not constitute a subpoena to the lessee) in accordance with the provisions of subparagraph (B)(i) shall toll the limitation period with respect to the obligation which is the subject of a subpoena only for the period beginning on the date the lessee or its designee receives the subpoena and ending on the date on which (i) the lessee or its designee has produced such subpoenaed records for the subject obligation, (ii) the Secretary or a delegated State receives written notice that the subpoenaed records for the subject obligation are not in existence or are not in the lessee's or its designee's possession or control, or (iii) a court has determined in a final decision that such records are not required to be produced, whichever occurs first.

(B)(i) A subpoena for the purposes of this section which requires a lessee or its designee to produce records necessary to determine the proper reporting and payment of an obligation due the Secretary may be issued only by an Assistant Secretary of the Interior or an Acting Assistant Secretary of the Interior who is a schedule C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations), or the Director or Acting Director of the respective bureau or agency, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such subpoena, but may not delegate such authority to any other person.

(ii) A subpoena described in clause (i) may only be issued against a lessee or its designee during the limitation period provided in this section and only after the Secretary or a delegated State has in writing requested the records from the lessee or its designee related to the obligation which is the subject of the subpoena and has determined that—

(I) the lessee or its designee has failed to respond within a reasonable period of time to the Secretary's or the applicable delegated State's written request for such records necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

(II) the lessee or its designee has in writing denied the Secretary's or the applicable delegated State's writ-

ten request to produce such records in the lessee's or its designee's possession or control necessary for an audit, investigation or other inquiry made in accordance with the Secretary's or such delegated State's responsibilities under this Act; or

(III) the lessee or its designee has unreasonably delayed in producing records necessary with the Secretary's or the applicable delegated State's responsibilities under this Act after the Secretary's or delegated State's written request.

(C) In seeking records, the Secretary or the applicable delegated State shall afford the lessee or its designee a reasonable period of time after a written request by the Secretary or such delegated State in which to provide such records prior to the issuance of any subpoena.

(3) MISREPRESENTATION OR CONCEALMENT.—The intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

(4) ORDER TO PERFORM RESTRUCTURED ACCOUNTING.—(A)(i) The issuance of a notice under subparagraph (D) that the lessee or its designee has not substantially complied with the requirement to perform a restructured accounting shall toll the limitation period with respect to the obligation which is the subject of the notice only for the period beginning on the date the lessee or its designee receives the notice and ending 120 days after the date on which (I) the Secretary or the applicable delegated State receives written notice that the accounting or other requirement has been performed, or (II) a court has determined in a final decision that the lessee is not required to perform the accounting, whichever occurs first.

(ii) If the lessee or its designee initiates an administrative appeal or judicial proceeding to contest an order to perform a restructured accounting issued under subparagraph (b)(i), the limitation period in subsection (b) shall be tolled from the date the lessee or its designee received the order until a final, non-appealable decision is issued in any such proceeding.

(B)(i) The Secretary or the applicable delegated State may issue an order to perform a restructured accounting to a lessee or its designee when the Secretary or such delegated State determines during an audit of a lessee or its designee that the lessee or its designee should recalculate royalty due on an obligation based upon the Secretary's or the delegated State's finding that the lessee or its designee has made identified underpayments or overpayments which are demonstrated by the Secretary or the delegated State to be based upon repeated, systemic reporting errors for a significant number of leases or a single lease for a significant number of reporting months with the same type of error which constitutes a pattern of violations and which are likely to result in either significant underpayments or overpayments.

(ii) The power of the Secretary to issue an order to perform a restructured accounting may not be delegated below the most

senior career professional position having responsibility for the royalty management program, which position is currently designated as the “Associate Director for Royalty Management”, and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205 of this Act, the State, acting through the highest ranking State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such order to perform, which may not be delegated to any other person. An order to perform a restructured accounting shall—

(I) be issued within a reasonable period of time from when the audit identifies the systemic, reporting errors;

(II) specify the reasons and factual bases for such order;

(III) be specifically identified as an “order to perform a restructured accounting”;

(IV) provide the lessee or its designee a reasonable period of time (but not less than 60 days) within which to perform the restructured accounting; and

(V) provide the lessee or its designee 60 days within which to file an administrative appeal of the order to perform a restructured accounting.

(C) An order to perform a restructured accounting shall not mean or be construed to include any other action by or on behalf of the Secretary or a delegated State.

(D) If a lessee or its designee fails to substantially comply with the requirement to perform a restructured accounting pursuant to this subsection, a notice shall be issued to the lessee or its designee that the lessee or its designee has not substantially complied with the requirements to perform a restructured accounting. A lessee or its designee shall be given a reasonable time within which to perform the restructured accounting. Such notice may be issued under this section only by an Assistant Secretary of the Interior or an acting Assistant Secretary of the Interior who is a scheduled C employee (as defined by section 213.3301 of title 5, Code of Federal Regulations) and may not be delegated to any other person. If a State has been delegated authority pursuant to section 205, the State, acting through the highest State official having ultimate authority over the collection of royalties from leases on Federal lands within the State, may issue such notice, which may not be delegated to any other person.

(e) **TERMINATION OF LIMITATIONS PERIOD.**—An action or an enforcement of an obligation by the Secretary or delegated State or a lessee or its designee shall be barred under this section prior to the running of the seven-year period provided in subsection (b) in the event—

(1) the Secretary or a delegated State has notified the lessee or its designee in writing that a time period is closed to further audit; or

(2) the Secretary or a delegated and a lessee or its designee have so agreed in writing.

For purposes of this subsection, notice to, or an agreement by, the designee shall be binding on any lessee who is liable pursuant to

section 102(a) for obligations that are the subject of the notice or agreement.

(f) **RECORDS REQUIRED FOR DETERMINING COLLECTIONS.**—Records required pursuant to section 103 of this Act by the Secretary or any delegated State for the purpose of determining obligations due and compliance with any applicable mineral leasing law, lease provision, Continental Shelf shall be maintained for the same period of time during which a judicial proceeding or demand may be commenced under subsection (b). If a judicial proceedings or demand is timely commenced, the record holder shall maintain such records until the final nonappealable decision in such judicial proceedings is made, or with respect to that demand is rendered, unless the Secretary or the applicable delegated State authorizes in writing an earlier release of the requirement to maintain such records. Notwithstanding anything herein to the contrary, under no circumstance shall a record holder be required to maintain or produce any record relating to any obligation for any time period which is barred by the applicable limitation in this section. In connection with any hearing, administrative proceeding, injury, investigation, or audit by the Secretary or a delegated State under this Act, the Secretary or the delegated State shall minimize the submission of multiple or redundant information and make a good faith effort to locate records previously submitted by a lessee or a designee to the Secretary or the delegated State, prior to requiring the lessee or the designee to provide such records.

(g) **TIMELY COLLECTIONS.**—In order to most effectively utilize resources available to the Secretary to maximize the collection of oil and gas receipts from lease obligations to the Treasury within the seven-year period of limitations, and consequently to maximize the State share of such receipts, the Secretary should not perform or require accounting, reporting, or audit activities if the Secretary and the State concerned determine that the cost of conducting or requiring the activity exceeds the expected amount to be collected by the activity, based on the most current 12 months of activity. This subsection shall not provide a defense to a demand or an order to perform a restructured accounting. The the maximum extent possible, the Secretary and delegated States shall reduce costs to the United States Treasury and the States by discontinuing requirements for unnecessary or duplicative data and other information, such as separate allowances and payor information, relating to obligations due. If the Secretary and the State concerned determine that collection will result sooner, the Secretary or the applicable delegated State may waive or forego interest in whole or in part.

(h) **APPEALS AND FINAL AGENCY ACTION.**—

(1) **33-MONTH PERIOD.**—Demands or orders issued by the Secretary or a delegated State are subject to administrative appeal in accordance with the regulations of the Secretary. No State shall impose any conditions which would hinder a lessee's or its designee's immediate appeal of an order to the Secretary or the Secretary's designee. The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings pending on the date of enactment of this section, within 33 months form the date such proceeding was commenced or 33 months from the date of such enactment, which-

ever is later. The 33-month period may be extended by any period of time agreed upon in writing by the Secretary and the appellant.

(2) *EFFECT OF FAILURE TO ISSUE DECISION.*—If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)—

(A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any non-monetary obligation and any monetary obligation the principal amount of which is less than \$10,000; and

(B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is \$10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with title 5 of the United States Code.

(i) *COLLECTIONS OF DISPUTED AMOUNTS DUE.*—To expedite collections relating to disputed obligations due within the seven-year period beginning on the date the obligation became due, the parties shall hold not less than one settlement consultation and the Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation, including waiver or reducing interest and allowing offsetting of obligations among leases.

(j) *ENFORCEMENT OF A CLAIM FOR JUDICIAL REVIEW.*—In the event a demand subject to this section is properly and timely commenced, the obligation which is the subject of the demand may be enforced beyond the seven-year limitations period without being barred by this statute of limitations. In the event a demand subject to this section is properly and timely commenced, a judicial proceeding challenging the final agency action with respect to such demand shall be deemed timely so long as such judicial proceeding is commenced within 180 days from receipt of notice by the lessee or its designee of the final agency action.

(k) *IMPLEMENTATION OF FINAL DECISION.*—In the event a judicial proceeding or demand subject to this section is timely commenced and thereafter the limitation period in this section lapses during the pendency of such proceeding, any party to such proceeding shall not be barred from taking such action as is required or necessary to implement a final unappealable judicial or administrative decision, including any action required or necessary to implement such decision by the recovery or recoupment of an underpayment or overpayment by means of refund or credit.

(l) *STAY OF PAYMENT OBLIGATION PENDING REVIEW.*—Any person ordered by the Secretary or a delegated State to pay any obligation (other than an assessment) shall be entitled to a stay of such payment without bond or other surety instrument pending an administrative or judicial proceeding if the person periodically demonstrates to the satisfaction of the Secretary that such person is financially solvent or otherwise able to pay the obligation. In the event the per-

son is not able to so demonstrate, the Secretary may require a bond or other surety instrument satisfactory to cover the obligation. Any person ordered by the Secretary or a delegated State to pay an assessment shall be entitled to a stay without bond or other surety instrument.

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ASSESSMENTS

SEC. 116. Beginning eighteen months after the date of enactment of this section, to encourage proper royalty payment the Secretary or the delegated State shall impose assessments on a person who chronically submits erroneous reports under this Act. Assessments under this Act may only be issued as provided for in this section.

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ALTERNATIVES FOR MARGINAL PROPERTIES

SEC. 117. (a) DETERMINATION OF BEST INTERESTS OF STATE CONCERNED AND THE UNITED STATES.—The Secretary and the State concerned, acting in the best interests of the United States and the State concerned to promote production, reduce administrative costs, and increase net receipts to the United States and the States, shall jointly determine, on a case by case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof, shall be subject to a prepayment under subsection (b) or regulatory relief under subsection (c). If the State concerned does not consent, such prepayments or regulatory relief shall not be made available under this section for such marginal production: Provide, That if royalty payments from a lease or leases, or well or wells are not shared with any State, such determination shall be made solely by the Secretary.

(b) PREPAYMENT OF ROYALTY.—

(1) IN GENERAL.—Notwithstanding the provisions of any lease to the contrary, for any lease or leases or well or wells identified by the Secretary and the State concerned pursuant to subsection (a), the Secretary is authorized to accept a prepayment for royalties in lieu of monthly royalty payments under the lease for the remainder of the lease term if the affected lessee so agrees. Any prepayment agreed to by the Secretary, State concerned and lessee which is less than an average \$500 per month in total royalties shall be effectuated under this section not earlier than two years after the date of enactment of this section and, any prepayment which is greater than an average \$500 per month in total royalties shall be effectuated under this section not earlier than three years after the date of enactment of this section. The Secretary and the State concerned may condition their acceptance of the prepayment authorized under this section on the lessee's agreeing to such terms and conditions as the Secretary and the State concerned deem appropriate and consistent with the purposes of this Act. Such terms may—

(A) provide for prepayment that does not result in a loss of revenue to the United States in present value terms;

(B) include provisions for receiving additional prepayments or royalties for developments in the lease or leases or

well or wells that deviate significantly from the assumptions and facts on which the valuation is determined; and
(C) require the lessee or its designee to provide such periodic production reports as may be necessary to allow the Secretary and the State concerned to monitor production for the purposes of subparagraph (B).

(2) STATE SHARE.—A prepayment under this section shall be shared by the Secretary with any State or other recipient to the same extent as any royalty payment for such lease.

(3) SATISFACTION OF OBLIGATION.—Except as may be provided in the terms and conditions established by the Secretary under subsection (b) a lessee or its designee who makes a prepayment under this section shall have satisfied in full the lessee's obligation to pay royalty on the production stream sold from the lease or leases or well or wells.

(c) ALTERNATIVE ACCOUNTING AND AUDITING REQUIREMENTS.—Within one year after the date of the enactment of this section, the Secretary or the delegated State shall provide accounting, reporting, and auditing relief that will encourage lessees to continue to produce and develop properties subject to subsection (a): Provided, that such relief will only be available to lessees in a State that concurs, which concurrence is to required if royalty payments from the lease or leases or well or wells are not shared with any State. Prior to granting such relief, the Secretary and if appropriate, the State concerned shall agree that the type of marginal wells and relief provided under this paragraph is in the best interest of the United States and, if appropriate, the State concerned

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DELEGATION TO STATES

【SEC. 205. (a) Upon written request of any State, the Secretary is authorized to delegate, in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to conduct inspection, audits, and investigations to any State with respect to all Federal lands or Indian lands within the State; except that the Secretary may not undertake such a delegation with respect to any Indian lands, except with the permission of the Indian tribe allottee involved.

【(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

【(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;

【(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section; and

【(3) such delegation will not create an unreasonable burden on any lessee,
 with respect to the Federal lands and Indian lands within the State.

[(c) The Secretary shall promulgate regulations which define those functions, if any, which must be carried out jointly in order to avoid duplication of effort, and any delegation to any State must be made in accordance with those requirements.

[(d) The Secretary shall be rule promulgate standards and regulations, pertaining to the authorities and responsibilities under subsection (a), including standards and regulations pertaining to:

[(1) audits performed;

[(2) records and accounts to be maintained; and

[(3) reporting procedures to be required by States under this section.

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

[(e) If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation.

[(f) The Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year.]

SEC. 205. (a) Upon written request of any State, the Secretary is authorized to delegate in accordance with the provisions of this section, all or part of the authorities and responsibilities of the Secretary under this Act to:

(1) conduct inspections, audits, and investigations;

(2) receive and process production and financial reports;

(3) correct erroneous report data;

(4) perform automated verification; and

(5) issue demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes,

to any State with respect to all Federal land within the State.

(b) After notice and opportunity for a hearing, the Secretary is authorized to delegate such authorities and responsibilities granted under this section as the State has requested, if the Secretary finds that—

(1) it is likely that the State will provide adequate resources to achieve the purposes of this Act;

(2) the State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Secretary under this Act in accordance with the requirements of subsections (c) and (d) of this section;

(3) such delegation will not create an unreasonable burden on any lessee;

(4) the State agrees to adopt standardized reporting procedures prescribed by the Secretary for royalty and production accounting purposes, unless the State and all affected parties (including the Secretary) otherwise agree;

(5) *the State agrees to follow and adhere to regulations and guidelines issued by the Secretary pursuant to the mineral leasing laws regarding valuation of production; and*

(6) *where necessary for a State to have authority to carry out and enforce a delegated activity, the State agrees to enact such laws and promulgate such regulations as are consistent with relevant Federal laws and regulations with respect to the Federal lands within the State.*

(c) *After notice and opportunity for hearing, the Secretary shall issue a ruling as to the consistency of a State's proposal with the provisions of this section and regulations under subsection (d) within 90 days after submission of such proposal. In any unfavorable ruling, the Secretary shall set forth the reasons therefor and state whether the Secretary will agree to delegate to the State if the State meets the conditions set forth in such ruling.*

(d) *After consultation with State authorities, the Secretary shall by rule promulgate, within 12 months after the date of enactment of this section, standards and regulations pertaining to the authorities and responsibilities to be delegated under subsection (a), including standards and regulations pertaining to:*

- (1) audits to be performed;*
- (2) records and accounts to be maintained;*
- (3) reporting procedures to be required by States under this section;*
- (4) receipt and processing of production and financial reports;*
- (5) correction of erroneous report data;*
- (6) performance of automated verification;*
- (7) issuance of standards and guidelines in order to avoid duplication of effort;*
- (8) transmission of report data to the Secretary; and*
- (9) issuance of demands, subpoenas, and orders to perform restructured accounting, for royalty management enforcement purposes.*

Such standards and regulations shall be designed to provide reasonable assurance that a uniform and effective royalty management system will prevail among the States. The records and accounts under paragraph (2) shall be sufficient to allow the Secretary to monitor the performance of any State under this section.

(e) *If, after notice and opportunity for a hearing, the Secretary finds that any State to which any authority or responsibility of the Secretary has been delegated under this section is in violation of any requirement of this section or any rule thereunder, or that an affirmative finding by the Secretary under subsection (b) can no longer be made, the Secretary may revoke such delegation. If, after providing written notice to a delegated State and a reasonable opportunity to take corrective action requested by the Secretary, the Secretary determines that the State has failed to issue a demand or order to a Federal lessee within the State, that such failure may result in an underpayment of an obligation due the United States by such lessee, and that such underpayment may be uncollected without Secretarial intervention, the Secretary may issue such demand or order in accordance with the provisions of this Act prior to or absent the withdrawal of delegated authority.*

(f) *Subject to appropriations, the Secretary shall compensate any State for those costs which may be necessary to carry out the delegated activities under this section. Payment shall be made no less than every quarter during the fiscal year. Compensation to a State may not exceed the Secretary's reasonably anticipated expenditure for performance of such delegated activities by the Secretary. Such costs shall be allocable for the purposes of section 35(b) of the Act entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain", approved February 25, 1920 (commonly known as the Mineral Leasing Act) (30 U.S.C. 191(b)) to the administration and enforcement of laws providing for the leasing of any onshore lands or interests in land owned by the United States. Any further allocation of costs under section 35(b) made by the Secretary for oil and gas activities, other than those costs to compensate States for delegated activities under this Act, shall be only those costs associated with onshore oil and gas activities and may not include any duplication of costs allocated pursuant to the previous sentence. Nothing in this section affects the Secretary's authority to make allocations under section 35(b) for non-oil and gas mineral activities. All moneys received from sales, bonuses, rentals, royalties, assessments and interest, including money claimed to be due and owing pursuant to a delegation under this section, shall be payable and paid to the Treasury of the United States.*

(g) *Any action of the Secretary to approve or disapprove a proposed submitted by a State under this section shall be subject to judicial review in the United States district court which includes the capitol of the State submitting the proposal.*

(h) *Any State operating pursuant to a delegation existing on the date of enactment of this Act may continue to operate under the terms and conditions of the delegation, except to the extent that a revision of the existing agreement is adopted pursuant to this section.*

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OUTER CONTINENTAL SHELF LANDS ACT (43 U.S.C. 1301-1356)

SEC. 10. [Repealed]

